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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/050,023 | 01/15/2002 | David D. Chase | 39697/25488 | 5503 |

29493 7590 08/22/2006

HUSCH & EPPENBERGER, LLC
190 CARONDELET PLAZA
SUITE 600
ST. LOUIS, MO 63105-3441

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| EXAMINER |
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FOREMAN, JONATHAN M

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| ART UNIT | PAPER NUMBER |
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3736

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|------------------------|--|---------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 10/050,023 | | CHASE ET AL. | |
| | Examiner | | Art Unit | |
| | Jonathan ML Foreman | | 3736 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50, 52 and 53 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 and 15-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-13, 40-45, 48, 52 and 53 is/are rejected.
- 7) ☒ Claim(s) 14, 46, 47, 49 and 50 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/30/06 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claim 52 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 52 depends from a cancelled claim and therefore is indefinite.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
5. Claims 9, 10, 40 – 43, 48, 52 and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,984,886 to Miller.

In regards to claims 9, 10, 40 – 43, 48, 52 and 53, Miller discloses a joint support belt having a front, a back and side panels sized to fit about the lower trunk of a user (Col. 5, lines 42 – 49), at positions substantially 90° and 270° from the human user's navel (Figure 2; Col. 6, lines 7 – 8), first

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and second sets of protrusions disposed at the side panels on the anterior surface of the belt body to press against the sides of the lower trunk of the user (Col. 6, lines 5 – 10; 15 - 22). Because there are multiple protrusions in different locations, the apply pressure at multiple recognizably separate points. No protrusions are disposed on the back of the human body. The positioning of a side panel will be a result of the body shape and size of the user (Col. 6, lines 11 – 14). The belt includes a placement structure comprising back adjustment mechanism (Col. 5, lines 50 – 61) capable of facilitating the placement of the support body at least one inch below the navel of a user.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 13, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,984,886 to Miller.

In regards to claims 11, 13, 44 and 45, Miller discloses protrusions (31) in a set and discloses multiple sizes of belts (Col. 6, lines 11 – 14), but fails to disclose the protrusions having a height from approximately one-eighth inch to one inch and being between approximately four millimeters and seventy millimeters measured center to center, from each other. However, a change in the size of a prior art device is a design consideration within the skill of the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). Here, modifying the size and spacing of the protrusions as disclosed by Miller be approximately one-eighth inch to one inch in height and between approximately four millimeters and seventy millimeters measured center to center would have been obvious to one

having ordinary skill in the art at the time the invention was made in order to allow for the protrusions to urge against the iliac crests of individuals of different sizes.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,984,886 to Miller as applied to claim 11, and further in view of U.S. Patent No. 5,769,803 to Brossard.

In regards to claim 12, Miller discloses first and second sets of protrusions (31) along the body of the support belt, but fails to disclose additional protrusions applying less pressure to the lower trunk of the user between the first and second sets of protrusions. However, Brossard discloses a set of protrusions (60; Figure 19) applying light pressure (Col. 10, lines 27 – 30) positioned on an area of a support belt lying between the positions of the protrusions as disclosed by Miller. It would have been obvious to one having ordinary skill in the art to modify the support belt as disclosed by Miller to include a set of protrusions as taught by Brossard in order to increase the reflex response of the muscle group (Abstract) located in the lumbar region.

Response to Arguments

Applicant's arguments filed 6/30/06 have been fully considered but they are not persuasive. Applicant asserts that Miller fails to disclose protrusions being sized and placed to apply pressure "at multiple recognizably separate points". However, because the protrusions disclosed by Miller are spaced from each other (see Figure 5), it is impossible that the protrusions apply pressure at the same location. Thus, the protrusions apply pressure at multiple recognizably separate points. In regards to the 35 U.S.C. 103(a) of claim 12, Applicant asserts that the combination is inconsistent with the Miller reference and would not be made. However, the Examiner disagrees and maintains that one having ordinary skill in the art would modify the support belt as disclosed by Miller to

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include a set of protrusions ad taught by Brossard in order to increase the reflex response of the muscle group (Abstract) located in the lumbar region

Allowable Subject Matter

8. Claims 14, 46, 47, 49 and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JMLF


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